

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SQF, LLC (U7335C) for Approval of
the Transfer of Control of SQF, LLC to
SDC Tilson Investor, LLC.

Application 19-04-025

**DECISION APPROVING TRANSFER
OF CONTROL OF SQF, LLC****Summary**

This decision grants the requested authority to transfer control of SQF, LLC (SQF) to SDC Tilson Investor, LLC (SDC) pursuant to Section 854 of the Public Utilities Code.

We conclude that approval of the proposed transfer of control is in conformance with applicable statutory law and Commission rules, and is in the public interest.

SQF will continue to operate in California and offer full facilities-based local exchange and interexchange telecommunications services. SQF currently has no customers in California and the proposed transfer of control to SDC will not affect the public. SQF is currently in compliance with all reporting requirements required by the Commission.

Application 19-04-025 is closed.

1. Procedural Background

On April 23, 2019, Applicant SQF, LLC (SQF) filed Application 19-04-025 pursuant to Public Utilities (Pub. Util) Code Section 854 seeking approval for the transfer of control of SQF to SDC Tilson Investor, LLC (SDC). According to the terms set forth in the Investment Agreement between SQF and SDC dated February 27, 2019, SDC will gain majority ownership and control of SQF post-transaction.

Concurrently, SQF filed a motion for leave to file under seal copies of said Investment Agreement between SQF and SDC, identified as Attachment D, and SQF's Financial Statements, identified as Attachment E, pursuant to Pub. Util. Code § 853, General Order 66-C, and Rule 11.4 of the Rules and Practice and Procedure.

On June 13, 2019, the assigned Administrative Law Judge (ALJ) issued a ruling granting Applicant's motion for leave to file under seal the attachments described above.

No protests or responses to the application were filed.

A telephonic prehearing conference (PHC) was held on June 19, 2019. No persons appeared other than those representing SQF and SDC. During the PHC, Applicant was required to file additional information regarding the application which Applicant filed on June 24, 2019.

On July 3, 2019, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) setting forth the issues, category, need for hearings, and procedural schedule of the application.

For prolonged proceedings, Procedural Background provides a narrative regarding how the matter reached the point where it is now being decided. A separate subsection is unnecessary if the procedural background is brief.

1.1. SQF

SQF is a Delaware limited liability company operating in California with its principal offices located in Portland, Maine. SQF was granted a Certificate of Public Convenience (CPCN) and Necessity in Decision (D.) 18-03-026 to provide full facilities-based local exchange and interexchange telecommunications services in California. SQF currently has no customers in California.¹

1.2. SDC

SDC is a Delaware limited liability company with principal offices in New York, New York. It is wholly-owned by SDC Capital Partners, LLC, a New York-based private investment firm focused on information technology and communications infrastructure.

2. Request

Applicant requests approval of a series of transactions resulting in the transfer of control of SQF to SDC pursuant to Pub. Util. Code § 854(a) which requires Commission authorization before a public utility company may merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state. The purpose of this and related code sections is to enable the Commission to review the transaction and to take such action or impose conditions as the public interest may require.

3. Terms of the Acquisition

Prior to the transaction, SQF was a wholly-owned subsidiary of Tilson Technology Management, Inc. (Tilson). After a series of transactions pursuant to an Investment Agreement dated February 27, 2019 and to facilitate the transfer of control to SDC, SQF shall sell and issue an agreed-upon number of shares to SDC

¹ D.18-03-026 Ordering Paragraph 1 at 17.

resulting in SDC owning a majority of SQF. The remaining minority ownership of SQF will be held by the principal owners of Tilson through a newly formed holding company, SQF Holdco, LLC.

The completion of the transaction is conditioned on obtaining required state regulatory approvals.² During the telephonic PHC, Applicant provided an update and disclosed that all necessary state regulatory approvals except for California have been obtained.

After the transaction is completed, SQF will continue to operate in California and continue to be managed by the officers and personnel of Tilson pursuant to a service agreement between Tilson and SQF. SQF currently has no customers in California but existing services to non-California customers will continue to be provided at the same rates, terms, and conditions that currently apply. The transaction will not result in any modification to SQF's existing tariffs, price lists, or customer contracts.

4. Standard of Review

Pub. Util. Code § 851 provides Commission authority to approve transfers of control which involve public utilities operating within California, as is requested in this proceeding. More specifically, Section 854(a) specifies that “[n]o person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission...”³

² A list of states in which regulatory approval is required and the actual or anticipated filing date is included in Attachment C.

³ Pub. Util. Code § 854(a).

The Commission has broad discretion under Section 854 to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest. The primary question in a transfer of control proceeding under Section 854(a) is whether the transaction will be adverse to the public interest. Sections 854(b) and 854(c) are not applicable to this transaction based on the gross intrastate revenues of the entities involved in the application. Section 854(b) applies to transactions where one of the utilities has gross annual intrastate revenues exceeding \$500 million and Section 854(c) applies to transactions where any of the parties to the transaction have gross intrastate revenues exceeding \$500 million.

5. Discussion

As described above, a series of transactions described in the Investment Agreement between SQF and SDC will result in SDC gaining majority ownership of SQF. The previous owners of SQF will retain minority ownership of SQF.

SQF will continue to operate in California pursuant to a CPCN issued by the Commission in D.18-03-026 granting authority to provide full facilities-based local exchange and interexchange telecommunications services. According to the Commission's Communication's Division, SQF is in compliance with the Commission's rules and regulations. Specifically, SQF is in compliance with the following reporting requirements:

- Annual and affiliate transaction reporting;
- Initial tariff filing;
- Annual tariff filing;
- Performance bond; and
- Surcharge and User Fee reporting and remittance.

Applicant submitted the required documents and information necessary for the Commission to consider and review the proposed application for transfer of control.

As stated above, SQF does not currently have any customers in California and the proposed transfer of control will not affect the services being offered to potential customers in California or the price for which these services are being offered. In other words, the proposed transaction will not result in any modification to SQF's existing tariffs, price lists, or customer contracts. In addition, SQF does not have any employees but will continue to be managed by Tilson.

The transaction allows SQF to gain access to the financial resources of SDC, allowing it to better meet the needs of its current customers and potential customers in California and to better compete in the telecommunications market. The technical and managerial resources available to SQF will continue to be managed and operated by officers and personnel of Tilson and supplemented by SDC management. The transaction will have no adverse impact on potential customers in California or SQF's non-California customers, and will not result in discontinuance, reduction, loss, or impairment of service to customers. After the transfer of control is completed, the Commission will retain the same regulatory authority over Applicant that it currently possesses.

Finally, the application does not involve any new construction or issues relating to the California Environmental Quality Act (CEQA) and will therefore not result in any adverse impact on the environment.

Based on the above considerations, we find that the proposed transfer of control of SQF to SDC is in compliance with Section 854(a), is in the public interest, and should therefore be approved.

6. Categorization

In Resolution ALJ 176-3437 dated May 16, 2019, the Commission preliminarily categorized this proceeding as ratesetting and we affirm that this is a ratesetting proceeding.

7. Need for Hearings

The Commission preliminarily determined that hearings are necessary. Because there are no factual issues in dispute, we find that hearings are not necessary.

8. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), the 30-day comment period is hereby waived.

9. Assignment of Proceeding

Commissioner Genevieve A. Shiroma is the assigned Commissioner and Rafael L. Lirag is the assigned ALJ and presiding officer.

Findings of Fact

1. The proposed transaction contemplates that after SDC acquires majority ownership of SQF, SQF shall continue to operate in California pursuant to the CPCN granted to it in D.18-03-026.
2. SDC will not operate in California as a result of the proposed transaction.
3. SQF does not currently have any employees but will continue to be operationally managed by SDC.
4. SQF does not currently have any customers in California and the proposed transaction will not affect the services it currently offers nor result in any modification to its existing tariffs, price lists, or customer contracts.

5. SQF submitted the required documents and information necessary for the Commission to consider and review the proposed application for transfer of control.

6. SQF is in compliance with applicable reporting requirements.

7. The transaction allows SQF to gain access to the financial resources of SDC allowing it to better meet the needs of its current customers and potential customers in California and to better compete in the telecommunications market.

8. The application does not propose any new construction and there are no CEQA-related issues.

9. There are no material issues of fact that are in dispute.

Conclusions of Law

1. The proposed transfer of control will not result in any adverse impacts to customers or result in any discontinuance, reduction, loss, or impairment of service to customers.

2. After the transfer of control is completed, the Commission will retain the same regulatory authority over Applicant that it currently possesses.

3. The proposed transaction will not result in any adverse impact on the environment.

4. The proposed transfer of control of SQF to SDC is in compliance with Pub. Util. Code § 854(a).

5. The proposed transaction is in the public interest and should be approved.

6. Hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. The proposed transfer of control of SQF, LLC (U7335C) to SDC Tilson Investor, LLC as described in the application is in compliance with Section 854(a) of the Public Utilities Code and is hereby approved.

2. SQF, LLC shall continue to be subject to the Commission's regulatory authority and shall continue to comply with applicable rules, regulations, and reporting requirements set forth by the Commission.

Application 19-04-025 is closed.

This order is effective today.

Dated _____, at Los Angeles, California.